

REMARKS

Claims 1-35 are pending. In an Official Action dated June 1, 2007, a provisional double patenting rejection was maintained, various previous rejections were withdrawn, and all claims were rejected under either 35 U.S.C. §§ 102 or 103. The various rejections are addressed below.

Previous Response and Petition

Applicants filed an after-final response, dated July 9, 2007. The amendments were not entered, as stated in an Advisory Action of September 5, 2007. Therefore, the amendments in this response are marked with reference to the claims as they were prior to the July 9, 2007 response.

On September 24, 2007, Applicants petitioned to have the amendments in the July 9, 2007 response entered. The petition has not yet been addressed by the Director. Applicants understand that the amendments filed herewith render the issues presented in the petition moot, and hereby withdraw the September 24 petition.

Provisional Double Patenting Rejection

Applicants respectfully defer addressing the provisional double patenting rejection until one of the applications issues as a patent.

Rejection of Claims 1, 2, 4, 8-11, 21, 22, 24, and 28-31 Under 35 U.S.C. § 102

Claims 1, 2, 4, 8-11, 21, 22, 24, and 28-31 were rejected under 35 U.S.C. § 102 as allegedly anticipated by U.S. Pat. 6,070,191 (Narendran). Applicants submit that independent claims 1 and 21 as amended clearly define over Narendran.

Narendran does not teach or suggest, for example, “wherein any of the plurality of servers can be designated as the director” as recited in claims 1 and 21. Instead, Narendran’s figures and specification both clearly show designated “redirection servers” and “document servers.” For example, Applicants point to Narendran Fig. 1 and Fig. 2, and for example Narendran col. 2, lines 61-65.

Withdrawal of the outstanding rejections under 35 U.S.C. § 102 is therefore respectfully requested.

Rejection of Claims 3, 5-7, 12-20, 23, 25-27 and 32 Under 35 U.S.C. § 103

Remaining claims 3, 5-7, 12-20, 23, 25-27 and 32 were rejected under 35 U.S.C. § 103(a) as allegedly obvious over Narendran alone or over Narendran in view of Aversa. Narendran, Aversa, and the other references of record fail to teach or suggest Applicants claimed invention at least for the reason set forth above with regard to the rejection under 35 U.S.C. § 102, alongside the requirement in each of Applicants' independent claims for a state table that contains asset information.

For example, claims 1 and 21 recite: "designating a director from the plurality of servers to receive the request, wherein the designation is made on a request-by-request basis and *wherein any of the plurality of servers can be designated as the director,*" and "*determining whether the content is stored on the director by accessing a state table stored on the director,* wherein the state table includes parametric information for each server in the plurality of servers." The latter language clearly suggests a state table with asset information.

Along the same lines, claim 13 recites "a state table comprising parametric information for each server in the plurality of server computers, *said state table enabling any one of the plurality of server computers to act as a director, said parametric information comprising information identifying assets maintained on the plurality of server computers.*"

This combination of claimed elements enables any server in a load balancing group to serve as a "director" at least in part by providing a state table with asset information regarding assets stored on the various servers in the load balancing group. This approach is novel and would not have been obvious in view of the cited references.

For example, neither Narendran nor Aversa disclose "said state table enabling any one of the plurality of server computers to act as a director" as recited in claim 13, or "determining whether the content is stored on the director by accessing a state table stored on the director" as recited in claims 1 and 21. Narendran has redirection servers and document servers that are in fixed roles. The redirection servers do not themselves store requested content, but instead redirect requests to document servers. Aversa also fails at least because

Aversa cannot redirect requests based on which computers in the load balancing group have and do not have requested content.

For the above reasons, Applicants submit that claims 1-35 define over the references of record. Withdrawal of the rejections and allowance of the Application is respectfully requested.

Applicants furthermore note that the Official Action takes “Official Notice” on page 8, item 17 that “the concept and advantages of taking into account whether the server has extended memory or an inline adaptable cache into the load calculations of Aversa is well known in the art.” The Official Action further alleges that “It would have been obvious to one of ordinary skill in the art to modify the teaching of Narendran-Aversa to include the use of extended memory or caching into the load calculations since Aversa lists numerous metrics which can be used to determine the load (i.e. open TCP connections, CPU utilization, etc.)(p.3, section 3.1). This would motivate one of skill in the art to find more metrics which can be used to determine load, eventually finding the utilization of extended memory and caching.”

Applicants request reconsideration of the above assertions. First, while the presence or absence of an extended memory or in-line adaptable cache may be a factor in a particular server’s *capacity to handle load*, the presence of such features does not measure *existing load*, as do the metrics cited in Aversa. For example, the number of open TCP connections, CPU utilization, number of redirected TCP connections, and number of active sockets, are all hardware-independent measures of existing load. Therefore, it would not have been obvious to one of skill in the art to add extended memory or in-line adaptable cache to the metrics cited from Aversa.

Second, Applicants object to the use of “Official Notice” in items 14 and 17 of the Official Action. As stated in MPEP 2144.03:

Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be “capable of

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such instant and unquestionable demonstration as to defy dispute" (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)).

Applicant's request evidence for the basis of such assertions, or allowance of Applicants claims if no prima facie case for obviousness can be supported by evidence. Furthermore, Applicants note that the statement on page 12, first paragraph of the Official Action regarding an applicant's duty to "seasonably challenge" is not supported by MPEP 2144.03 or *In Re Chevenard*. On the contrary, MPEP 2144.03 says that the Examiner must be readily able to prove assertions that are not supported by evidence, on demand, without mention of when such demand may be made. *In Re Chevenard* dealt with claims canceled after a restriction requirement, which is not the case here.

Applicants respectfully request withdrawal of the outstanding rejections and allowance of the application.

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